

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

March 24, 2011

In the Matter of HUNT, Minors.

No. 299013

Wexford Circuit Court

Family Division

LC No. 2009-022141-NA

Before: GLEICHER, P.J., and WHITBECK and OWENS, JJ.

PER CURIAM.

Respondent A. M. Hunt appeals as of right the order terminating her parental rights to her twin infants, Baby A and Baby K, pursuant to MCL 712A.19b(3)(b)(ii),¹ (g),² and (j).³ Hunt's husband and the babies' father, T. Hunt, voluntarily relinquished his parental rights and is not a party to this appeal. We affirm.

I. FACTS

The twins were brought to the attention of the Department of Human Services (DHS) after they were found to have significant non-accidental injuries when they were three weeks old. T. Hunt admitted to shaking Baby A, causing brain and eye injury as well as a weakness on one side of her body. The other infant, Baby K, suffered two broken wrist bones and two broken

¹ MCL 712A.19b(3)(b)(ii) (stating that the trial court may terminate a parent's rights to a child if the court finds, by clear and convincing evidence, that "[t]he parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and . . . there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home").

² MCL 712A.19b(3)(g) (stating that the trial court may terminate a parent's rights to a child if the court finds, by clear and convincing evidence, that the parent, without regard to intent, failed to provide proper care or custody and there is no reasonable expectation that parent will be able to provide such within a reasonable time considering the child's age).

³ MCL 712A.19b(3)(j) (stating that the trial court may terminate a parent's rights to a child if the court finds, by clear and convincing evidence, that there is a reasonable likelihood of harm, based on the parent's conduct or capacity, if the child is returned to the parent).

ankle bones along with a contusion to her head. Hunt and T. Hunt had a history of domestic violence, and services were put in place after the babies were born because of several referrals and concerns by hospital staff about T. Hunt's behavior in the hospital.

After the babies were born, Hunt and T. Hunt were educated by service providers about issues of domestic violence and the effects that it could have on the babies. They were also educated about dealing with the frustration of caring for twins, as well as safety plans so that their frustration did not get out of control. The new parents were educated on the need to reassure babies when they cried. Yet, T. Hunt expressed his opinion that picking up babies when they cried would cause them to become spoiled.

When the babies were approximately a week old, Hunt became upset that T. Hunt was not helping her and decided to take them to her mother's house to get additional help and give T. Hunt some time to think. T. Hunt began to yell and kicked the coffee table, causing the glass top to shatter. Hunt moved the babies to her mother's house and informed the caseworker what had occurred. The caseworker told Hunt that she could not return to the home until T. Hunt received counseling and was evaluated for medication, exhibited that he benefited from the counseling, and DHS informed them that she could move back into the marital home.

After several weeks, Hunt and the babies moved back into the home with T. Hunt. Within a day or so, Hunt left the babies alone in T. Hunt's care so that she could get some sleep. The next morning, Baby A had a fever and would not eat. After consulting with the babies' physician, Hunt took the babies to the hospital and their injuries were discovered. T. Hunt admitted shaking Baby A because he was frustrated with her crying. None of the individuals who had access to the babies—which included only Hunt, T. Hunt, and Hunt's mother—claimed to know of anything that could have caused Baby K's broken bones. Medical professionals ruled out other possible causes of injury and determined that both babies suffered from non-accidental trauma.

T. Hunt pleaded guilty to first-degree child abuse with respect to the injuries that Baby A suffered and voluntarily relinquished his parental rights to both babies. After a three-day trial and testimony from both parents, their relatives, service providers, and medical staff, the trial court found that it had jurisdiction and terminated Hunt's parental rights to the babies. Hunt now appeals.

II. STATUTORY GROUNDS FOR TERMINATION

A. STANDARD OF REVIEW

To terminate parental rights, the trial court must find that the DHS has proven at least one of the statutory grounds for termination by clear and convincing evidence.⁴ We review for clear

⁴ MCL 712A.19b(3); *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999).

error a trial court's decision terminating parental rights.⁵ A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made.⁶ We give regard to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.⁷

B. MCL 712A.19b(3)(b)(ii)

The evidence is clear and convincing that both of the babies suffered serious physical injury, and the injuries to both babies were considered non-accidental. The Child Protection Team at DeVos Children's Hospital diagnosed Baby A with battered child syndrome and non-accidental head trauma. The hospital also diagnosed Baby K with battered child syndrome and non-accidental head trauma, as well as fractures of her wrists and ankles.

The evidence is also clear and convincing that Hunt had the opportunity to prevent the injuries but failed to do so. Hunt was keenly aware of T. Hunt's anger issues and the fact that alcohol lowered his threshold for violence. She had repeatedly been on the receiving end of his domestic violence. Hunt and T. Hunt argued frequently, and it was reported that T. Hunt yelled obscenities at her on many occasions, bit her twice, and pushed her against the garage on another occasion. Further, in Hunt's presence, T. Hunt asked service providers about shaken baby syndrome, and both parents were warned about being frustrated and coming up with a plan to call for help when they needed a cooling down period. Also in Hunt's presence, T. Hunt told professional service providers that the babies' crying frustrated him and that he did not understand the need to pick them up and comfort them. He expressed his opinion that they needed to be punished so they would not be spoiled. T. Hunt even stood in Hunt's way on one occasion when the babies were crying so that Hunt could not console them. Despite all of the warning signs, Hunt moved herself and her babies back into the marital home and left the babies alone in T. Hunt's care so she could get some sleep even though she knew he had been drinking. Hunt clearly failed to protect the babies.

Further, the evidence was clear and convincing that there was a reasonable likelihood that the babies would be physically injured in the foreseeable future if returned to Hunt's care. Hunt did not show emotion at the hospital over what had happened to her babies. And during the professionals' testimony describing the babies' injuries, Hunt still did not show any emotion. The trial court observed her demeanor and described her affect as flat. She did not express anger toward T. Hunt for harming the babies; instead, she chastised him for admitting to the medical professionals that he shook Baby A before they independently determined the cause of her injuries. Moreover, Hunt sent lengthy letters to T. Hunt while he was in jail awaiting sentencing, professing her love and her undying devotion. When asked whether she would give up her relationship with T. Hunt, Hunt made it clear that she would only do that if she was required to

⁵ MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Sours Minors*, 459 Mich at 633.

⁶ *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

⁷ MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

do so to keep the twins, stating that she was accustomed to abuse and that they had a long history together. The trial court found that Hunt was in a co-dependent relationship with T. Hunt and that she gravitated to domestic abuse situations. There was nothing in the record to suggest that Hunt would exercise any effort to protect her children from T. Hunt in the future.

Hunt argues that she was being held to a higher standard than professionals to protect her children. This argument is without merit. The professionals who were involved with Hunt and T. Hunt were only privy to information that the couple gave them. Both Hunt and T. Hunt downplayed the domestic violence that existed between them, and they told professionals that they were doing well together, even though that was not true. Hunt was aware of T. Hunt's anger and violence issues, yet she chose to stand by him rather than keep her babies safe. She had knowledge of significantly more facts than the service providers working with her, and, as the babies' mother, she had an obligation to make sure that they were safe, especially from harm by their own father.

Hunt also argues that the evidence showed numerous instances where she was appropriately protective of the babies, pointing to her removal of the babies from the room when T. Hunt kicked the glass table and taking the babies to her mother's home after that incident. Unfortunately, Hunt fails to recognize the danger to which she exposed the babies when she took them back to the marital home, knowing of T. Hunt's violent nature and his frustration with the babies' crying. This occurred after both parents were instructed that babies cry because of the difficult transition they have recently made from the womb to the world and that they need to be reassured. It was also after they were educated on the need to have a safety plan to deal with frustration because of the difficulty most parents have when dealing with twin babies. There is no evidence that Hunt or T. Hunt learned anything from those lessons. Indeed, the record directly contradicts it. Hunt not only brought the babies back to live in the marital home with T. Hunt, but she left them alone with T. Hunt after he had been drinking. The foster care worker had warned Hunt that the babies should not be left alone with T. Hunt and that his visits with them should always be supervised. Hunt's voluntarily placing them in a dangerous situation outweighs the instances where she demonstrated minimal levels of common sense and concern.

Hunt also argues that the babies' injuries might not have been diagnosed if she had not been so diligent and attentive to their needs, noting that she took them to the hospital on the advice of their physician when Baby A was running a fever and would not eat. We decline to extol conduct that is merely the expected course of action when caring for a sick child.

Accordingly, we conclude that the trial court did not clearly err when it found clear and convincing evidence to support termination of Hunt's parental rights under MCL 712A.19b(3)(b)(ii).

C. MCL 712A.19b(3)(g) AND (j)

As stated, to terminate parental rights, the trial court need only find that the DHS has proven one of the statutory grounds for termination by clear and convincing evidence.⁸ And the trial court's findings under MCL 712A.19b(3)(b)(ii) provided more than enough support for termination of Hunt's parental rights. However, in light of Hunt's arguments on appeal, we find it necessary to emphasize the seriousness of her conduct and state our agreement with the trial court's finding that the evidence also supported termination of Hunt's parental rights under MCL 712A.19b(3)(g) and (j).

Not only did Hunt admit to smoking cigarettes throughout her pregnancy, she also admitted to smoking marijuana, both before she knew she was pregnant and then during the pregnancy, to improve her appetite. She engaged in this behavior even though she had been informed of the adverse effects that her actions could have on her unborn children. Hunt did not provide proper care and custody when she moved back into her home with the twins and allowed T. Hunt to care for them unsupervised. And she did this despite her knowledge that he became frustrated when the babies cried, that he had difficulty dealing with this frustration in a healthy way, and that he had issues with controlling his anger.

More concerning was that Hunt had been the recipient of T. Hunt's physical violence herself and had no reason to believe that he would not be physically violent with the babies. Even after Hunt was made aware that T. Hunt had harmed one baby and suspected that he had harmed the other, she never showed anger toward him, but instead stood by him, writing him love letters, and hoping to be a family again. After the babies were removed from her care, she showed no interest in their emotional well being, inquiring only about their physical injuries.

Based on her actions, the trial court did not err in finding that there was no reasonable expectation that she would be able to provide proper care or custody within a reasonable time, considering the twins' tender age, and that there was a reasonable likelihood, based on Hunt's conduct, that the twins would be further harmed if returned to her home.

We affirm.

/s/ Elizabeth L. Gleicher

/s/ William C. Whitbeck

/s/ Donald S. Owens

⁸ MCL 712A.19b(3); *In re Sours Minors*, 459 Mich at 632.